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C O N F I D E N T I A L LILONGWE 000932

SIPDIS

STATE FOR AF/S
STATE FOR INR/AA
PARIS FOR D'ELIA

E.O. 12958: DECL: 10/24/2010

TAGS: [PGOV](#) [KDEM](#) [PREL](#) [MI](#)

SUBJECT: HIGH COURT PUTS INJUNCTION ON PRESIDENTIAL
IMPEACHMENT ATTEMPT

REF: A. LILONGWE 914

[B](#). LILONGWE 634
[C](#). LILONGWE 614

Classified By: PolOff Tyler Sparks for reasons 1.4 b and d.

[1](#)1. (SBU) Summary: The High Court issued an injunction against the Presidential impeachment procedures over the weekend. This came after a notice of indictment of the President was presented in Parliament on Friday, October [2](#)1. The Speaker had accepted the notice, and summoned President Mutharika to Parliament to hear the charges against him on Thursday, October 27. However, the injunction leaves the impeachment issue in limbo, as Parliament begins its third and final full week of its current sitting. End Summary.

[2](#)2. (U) The Speaker of Parliament read out the names of the 76 MPs who had signed the notice of impeachment in Parliament on October 21. At that point the entire government side walked out of Parliament in protest. The notice requires only 1/3 of the sitting MPs and must be filed 7 days before the motion is presented on the floor. It was supported by opposition Union of Democratic Forces (UDF) MPs, as well as some opposition Malawi Congress Party (MCP) MPs. However, a number of notable figures were not on the list, including the leader of opposition John Tembo and former Vice-President and current independent MP Justin Malawezi.

[3](#)3. (C) Malawezi, in a conversation with the Ambassador on Saturday October 22, was highly critical of John Tembo, describing him as "drunk with power" or at least the prospect thereof. Malawezi, who served as Bakili Muluzi's vice president from 1994 to 2004, said he doesn't believe the opposition will be able to muster the 2/3 majority needed for impeachment. He thinks a number of MCP MPs are not for impeachment, and are unsatisfied with the leadership of John Tembo. The vote on impeachment will be by secret ballot, which would free up MPs to vote their conscience and likely lead to defections in both directions, leading Malawezi unable to do any precise vote-counting as to any vote's ultimate outcome.

[4](#)4. (SBU) The high court ruling over the weekend puts the brakes on the entire process however, and seems to rule out the possibility of an impeachment during this sitting of Parliament (which rises October 31). The injunction restrains Parliament from any action relating to standing order 84, the new impeachment procedures that were adopted last week (reftel A). The Speaker has announced that Parliament will hire its own lawyers to challenge the case. The injunction will remain in place until the High Court determines the constitutionality of the impeachment procedures or the injunction itself is overturned. The impeachment procedures have come under fire because they make Parliament prosecutor, judge and jury in the impeachment process (reftel A).

[5](#)5. (C) Comment: While the Malawian court system is highly regarded in terms of impartiality, it is also slow. As such, it could be weeks if not months before the High Court addresses the impeachment procedures, at which point there is a decent chance they will indeed determine them unconstitutional. Hopefully, this means that Parliament will focus on the very serious work that sits before it, and put the impeachment process to the side for the moment. However, it also means that the uncertainty that has accompanied the past few months will continue on, as the specter of impeachment continues to hang over the President's head.
EASTHAM